

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Policy and Operations

4 (Amendment)

5 907 KAR 9:005. Non-outpatient level I and II psychiatric residential treatment facility  
6 service and coverage policies.

7 RELATES TO: KRS 205.520, 216B.450, 216B.455, 216B.459

8 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R.  
9 440.160, 42 U.S.C. 1396a-d

10 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family  
11 Services, Department for Medicaid Services, has a responsibility to administer the  
12 Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation,  
13 to comply with any requirement that may be imposed or opportunity presented by  
14 federal law to qualify for federal Medicaid funds. This administrative regulation  
15 establishes Medicaid program coverage policies regarding Level I and Level II  
16 psychiatric residential treatment facility services that are not provided on an outpatient  
17 basis.

18 Section 1. Definitions. (1) "Active treatment" means a covered Level I or II psychiatric  
19 residential treatment facility service provided:

20 (a) In accordance with an individual plan of care as specified in 42 C.F.R. 441.154;  
21 and

(b) By an individual employed or contracted by a Level I or II PRTF including a:

1. Qualified mental health personnel;
2. Qualified mental health professional;
3. Mental health associate; or
4. Direct care staff person.

(2) "Acute care hospital" is defined by KRS 205.639(1).

(3) "Advanced practice registered nurse" is defined by KRS 314.011(7).

(4) "Behavioral health professional" means:

(a) A psychiatrist;

(b) A physician licensed in Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties;

(c) A licensed psychologist [~~licensed and practicing in accordance with KRS 319.050~~];

(d) A [~~certified psychologist with autonomous functioning or~~] licensed psychological practitioner [~~certified and practicing in accordance with KRS 319.056~~];

(e) A licensed clinical social worker [~~licensed and practicing in accordance with KRS 335.100~~];

(f) An advanced practice registered nurse [~~licensed and practicing in accordance with KRS 314.042~~];

(g) A licensed marriage and family therapist [~~licensed and practicing in accordance with KRS 335.300~~];

1 (h) A licensed professional clinical counselor [~~licensed and practicing in accordance~~  
2 ~~with KRS 335.500~~];

3 (i) A licensed professional art therapist certified and practicing in accordance with  
4 KRS 309.130; [or]

5 (j) A licensed clinical [A~~n~~] alcohol and drug counselor contingent and effective upon  
6 approval by the Centers for Medicare and Medicaid Services;

7 (k) A certified psychologist with autonomous functioning[~~certified and practicing in~~  
8 ~~accordance with KRS 309.080 to 309.089~~].

9 (5)[(4)] "Behavioral health professional under clinical supervision" means:

10 (a) A certified psychologist [~~certified and practicing in accordance with KRS 319.056~~];

11 (b) A licensed psychological associate [~~licensed and practicing in accordance with~~  
12 ~~KRS 319.064~~];

13 (c) A marriage and family therapy[~~therapist~~] associate [~~permitted and practicing in~~  
14 ~~accordance with KRS 335.300~~];

15 (d) A certified social worker [~~certified and practicing in accordance with KRS~~  
16 ~~335.080~~]; [or]

17 (e) A licensed professional counselor associate;

18 (f) A licensed professional art therapist associate; or

19 (g) A licensed clinical alcohol and drug counselor associate contingent and effective  
20 upon approval by the Centers for Medicare and Medicaid Services[~~licensed and~~  
21 ~~practicing in accordance with KRS 335.500~~].

22 (6) "Certified alcohol and drug counselor" means an individual who meets the  
23 requirements established in KRS 309.083.

1     (7) "Certified psychologist" means an individual who is recognized as a certified  
2     psychologist in accordance with Title 201, Chapter 26 of the Kentucky Administrative  
3     Regulations.

4     (8) "Certified psychologist with autonomous functioning" means an individual who is a  
5     certified psychologist with autonomous functioning pursuant to KRS 319.056.

6     (7) "Certified social worker" means an individual who meets the requirements  
7     established in KRS 335.080.

8     ~~(8)[(5)]~~ "Child with a severe emotional disability" is defined by KRS 200.503(2).

9     ~~(9)[(6)]~~ "Department" means the Department for Medicaid Services or its designee.

10    ~~(10)[(7)]~~ "Diagnostic and assessment services" means at least one (1) face-to-face  
11    specialty evaluation or specialty evaluation performed via telemedicine of a recipient's  
12    medical, social, and psychiatric status provided by a physician or qualified mental health  
13    professional that shall:

14    (a) Include:

15    1. Interviewing and evaluating; or

16    2. Testing;

17    (b) Be documented and record all contact with the recipient and other interviewed  
18    individuals; and

19    (c) Result in a:

20    1. Medical data code in accordance with 45 C.F.R. 162.1000; and

21    2. Specific treatment recommendation.

22    (11) "Enrollee" means a recipient who is enrolled with a managed care organization.

23    ~~(12)[(8)]~~ "Federal financial participation" is defined by 42 C.F.R. 400.203.

1 **(13)~~(9)~~ "Intensive treatment services" means a program:**

2 **(a) For a child:**

3 **1. With a severe emotional disability; and**

4 **a. An intellectual disability;**

5 **b. A severe and persistent aggressive behavior;**

6 **c. Sexually acting out behavior; or**

7 **d. A developmental disability;**

8 **2. Who requires a treatment-oriented residential environment; and**

9 **3. Between the ages of four (4) to twenty-one (21) years; and**

10 **(b) That provides psychiatric and behavioral health services two (2) or more times per**  
11 **week to a child referenced in paragraph (a) of this subsection:**

12 **1. As indicated by the child's psychiatric and behavioral health needs; and**

13 **2. In accordance with the child's therapeutic plan of care.**

14 **(14)~~(10)~~ "Interdisciplinary team" means:**

15 **(a) For a recipient who is under the age of eighteen (18) years:**

16 **1. A parent, legal guardian, or caregiver of the recipient;**

17 **2. The recipient;**

18 **3. A qualified mental health professional; and**

19 **4. A staff person, if available, who worked with the recipient during the recipient's**  
20 **most recent placement if the recipient has previously been in a Level I or II PRTF; or**

21 **(b) For a recipient who is eighteen (18) years of age or older:**

22 **1. The recipient;**

23 **2. A qualified mental health professional; and**

1        3. A staff person, if available, who worked with the recipient during the recipient's  
2 most recent placement if the recipient has previously been in a Level I or II PRTF.

3        (15)[(11)] "Level I PRTF" means a psychiatric residential treatment facility that meets  
4 the criteria established in KRS 216B.450(5)(a).

5        (16)[(12)] "Level II PRTF" means a psychiatric residential treatment facility that meets  
6 the criteria established in KRS 216B.450(5)(b).

7        (17) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).

8        (18) "Licensed clinical alcohol and drug counselor associate" is defined by KRS  
9 309.080(5).

10        (19) "Licensed clinical social worker" means an individual who meets the licensed  
11 clinical social worker requirements established in KRS 335.100.

12        (20) "Licensed marriage and family therapist" is defined by KRS 335.300(2).

13        (21) "Licensed professional art therapist" is defined by KRS 309.130(2).

14        (22) "Licensed professional art therapist associate" is defined by KRS 309.130(3).

15        (23) "Licensed professional clinical counselor" is defined by KRS 335.500(3).

16        (24) "Licensed professional counselor associate" is defined by KRS 335.500(4).

17        (25) "Licensed psychological associate" means an individual who:

18        (a) Currently possesses a licensed psychological associate license in accordance  
19 with KRS 319.010(6); and

20        (b) Meets the licensed psychological associate requirements established in 201 KAR  
21 Chapter 26.

22        (26) "Licensed psychological practitioner" means an individual who meets the  
23 requirements established in KRS 319.053.

1 (27) "Licensed psychologist" means an individual who:

2 (a) Currently possesses a licensed psychologist license in accordance with KRS

3 319.010(6); and

4 (b) Meets the licensed psychologist requirements established in 201 KAR Chapter

5 26.

6 (28) "Marriage and family therapy associate" is defined by KRS 335.300(3).

7 (29)[(13)] "Medicaid payment status" means a circumstance in which:

8 (a) The person:

9 1. Is eligible for and receiving Medicaid benefits; and

10 2. Meets patient status criteria for Level I or II psychiatric residential treatment facility  
11 services; and

12 (b) The facility is billing the Medicaid program for services provided to the person.

13 (30)[(14)] "Medically necessary" or "medical necessity" means that a covered benefit  
14 is determined to be needed in accordance with 907 KAR 3:130.

15 (31)[(15)] "Mental health associate" means:

16 (a)1. An individual with a minimum of a bachelor's degree in a mental health related  
17 field;

18 2. A registered nurse; or

19 3. A licensed practical nurse with at least one (1) year's experience in a psychiatric  
20 inpatient or residential treatment setting for children; or

21 (b) An individual with:

22 1. A high school diploma or an equivalence certificate; and

2. At least two (2) years work experience in a psychiatric inpatient or residential treatment setting for children.

(32) "Peer support specialist" means an individual who meets the peer specialist qualifications established in:

(a) 908 KAR 2:220;

(b) 908 KAR 2:230; or

(c) 908 KAR 2:240.

(33)[(16)] "Physician" is defined by KRS 311.550(12).

(34) "Physician assistant" is defined by KRS 311.840(3).

(35)[(17)] "Private psychiatric hospital" is defined by KRS 205.639(2).

(36) "Provider" is defined by KRS 205.8451(7).

(37) "Provider abuse" is defined by KRS 205.8451(8).

(38)[(18)] "Psychiatric residential treatment facility" or "PRTF" is defined by KRS 216B.450(5).

(39)[(19)] "Psychiatric services" means:

(a) An initial psychiatric evaluation of a recipient which shall include:

1. A review of the recipient's:

a. Personal history;

b. Family history;

c. Physical health;

d. Prior treatment; and

e. Current treatment;

2. A mental status examination appropriate to the age of the recipient;



1 3. A meeting with the family or any designated significant person in the recipient's  
2 life; and

3 4. Ordering and reviewing:

4 a. Laboratory data;

5 b. Psychological testing results; or

6 c. Any other ancillary health or mental health examinations;

7 (b) Development of an initial plan of treatment which shall include:

8 1. Prescribing and monitoring of psychotropic medications; or

9 2. Providing and directing therapy to the recipient;

10 (c) Implementing, assessing, monitoring, or revising the treatment as appropriate to  
11 the recipient's psychiatric status;

12 (d) Providing a subsequent psychiatric evaluation as appropriate to the recipient's  
13 psychiatric status;

14 (e) Consulting, if determined to be necessary by the psychiatrist responsible for  
15 providing or overseeing the recipient's psychiatric services, with another physician, an  
16 attorney, police, regarding the recipient's care and treatment; or

17 (f) Ensuring that the psychiatrist responsible for providing or overseeing the  
18 recipient's psychiatric services has access to the information referenced in paragraph  
19 (e) of this subsection.

20 (40) [(20)] "Qualified mental health personnel" is defined by KRS 216B.450(6).

21 (41) [(24)] "Qualified mental health professional" is defined by KRS 216B.450(7).

22 (42) "Recipient" is defined by KRS 205.8451(9).

23 (43) "Recipient abuse" is defined by KRS 205.8451(10).

1     ~~(44)~~~~(22)~~ "Review agency" means for a review, evaluation, or authorization decision  
2 regarding an individual who is:

3     (a) Not enrolled with a managed care organization:

4         1. The department; or

5         2. An entity under contract with the department; or

6     (b) Enrolled with a managed care organization:

7         1. The managed care organization with which the enrollee is enrolled; or

8         2. An entity under contract with the managed care organization with which the  
9 enrollee is enrolled.

10    ~~(45)~~~~(23)~~ "State mental hospital" is defined by KRS 205.639(3).

11    ~~(46)~~~~(24)~~ "Telemedicine" means two-way, real time interactive communication  
12 between a patient and a physician or practitioner located at a distant site for the  
13 purpose of improving a patient's health through the use of interactive  
14 telecommunications equipment that includes, at a minimum, audio and video  
15 equipment.

16    ~~(47)~~~~(25)~~ "Treatment plan" means a plan created for the care and treatment of a  
17 recipient that:

18         (a) Is developed in a face-to-face meeting by the recipient's interdisciplinary team;

19         (b) Describes a comprehensive, coordinated plan of medically necessary behavioral  
20 health services that specifies a modality, frequency, intensity, and duration of services  
21 sufficient to maintain the recipient in a PRTF setting; and

22         (c) Identifies:

1       1. A program of therapies, activities, interventions, or experiences designed to  
2 accomplish the plan;

3       2. A qualified mental health professional, a mental health associate, or qualified  
4 mental health personnel who shall manage the continuity of care;

5       3. Interventions by caregivers in the PRTF and school setting that support the  
6 recipient's ability to be maintained in a PRTF setting;

7       4. Behavioral, social, and physical problems with interventions and objective,  
8 measurable goals;

9       5. Discharge criteria that specifies the:

10      a. Recipient-specific behavioral indicators for discharge from the service;

11      b. Expected service level that would be required upon discharge; and

12      c. Identification of the intended provider to deliver services upon discharge;

13       6. A crisis action plan that progresses through a continuum of care that is designed to  
14 reduce or eliminate the necessity of inpatient services;

15       7. A plan for:

16      a. Transition to a lower intensity of services; and

17      b. Discharge from PRTF services;

18       8. An individual behavior management plan;

19       9. A plan for the involvement and visitation of the recipient with the birth family,  
20 guardian, or other significant person, unless prohibited by a court, including therapeutic  
21 off-site visits pursuant to the treatment plan; and

22       10. Services and planning, beginning at admission, to facilitate the discharge of the  
23 recipient to an identified plan for home-based services or a lower level of care.

1       Section 2. Provider Participation. (1)(a) In order to participate, or continue to  
2 participate, in the Kentucky Medicaid Program, a Level I PRTF shall:

3       1. Have a utilization review plan for each recipient consisting of, at a minimum, a pre-  
4 admission certification review submitted via telephone or electronically to the review  
5 agency prior to admission of the recipient;

6       2. Perform and place in each recipient's record:

7       a. A medical evaluation;

8       b. A social evaluation; and

9       c. A psychiatric evaluation;

10      3. Establish a plan of care for each recipient which shall be placed in the recipient's  
11 record;

12      4. Appoint a utilization review committee which shall:

13      a. Oversee and implement the utilization review plan; and

14      b. Evaluate each Medicaid admission and continued stay prior to the expiration of the  
15 Medicaid certification period to determine if the admission or stay is or remains  
16 medically necessary;

17      5. Comply with staffing requirements established in 902 KAR 20:320;

18      6. Be located in the Commonwealth of Kentucky;

19      7. Maintain accreditation by the Joint Commission on Accreditation of Health Care  
20 Organizations or the Council on Accreditation of Services for Families and Children or  
21 any other accrediting body with comparable standards that is recognized by the state;  
22 and

1 8. Comply with all conditions of Medicaid provider participation established in 907  
2 KAR 1:671 and 907 KAR 1:672.

3 (b) In order to participate, or continue to participate, in the Kentucky Medicaid  
4 Program, a Level II PRTF shall:

5 1. Have a utilization review plan for each recipient;

6 2. Establish a utilization review process which shall evaluate each Medicaid  
7 admission and continued stay prior to the expiration of the Medicaid certification period  
8 to determine if the admission or stay is or remains medically necessary;

9 3. Comply with staffing requirements established in 902 KAR 20:320;

10 4. Be located in the Commonwealth of Kentucky;

11 5. Maintain accreditation by the Joint Commission on Accreditation of Health Care  
12 Organizations or the Council on Accreditation of Services for Families and Children or  
13 any other accrediting body with comparable standards that is recognized by the state;

14 6. Comply with all conditions of Medicaid provider participation established in 907  
15 KAR 1:671 and 907 KAR 1:672;

16 7. Perform and place in each recipient's record a:

17 a. Medical evaluation;

18 b. Social evaluation; and

19 c. Psychiatric evaluation; and

20 8. Establish a plan of care for each recipient which shall:

21 a. Address in detail the intensive treatment services to be provided to the recipient;

22 and

23 b. Be placed in the recipient's record.

1 (2)(a) A pre-admission certification review for a Level I PRTF shall:

2 1. Contain:

3 a. The recipient's valid Medicaid identification number;

4 b. For a recipient who is not enrolled with a managed care organization, a valid MAP-  
5 569, Certification of Need by Independent Team Psychiatric Preadmission Review of  
6 Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21)  
7 which satisfies the requirements of 42 C.F.R. 44.152 and 42 C.F.R. 441.153 for patients  
8 age twenty-one (21) and under;

9 c. A DMS-IV R diagnosis on all five (5) axes, except that failure to record an axis IV  
10 or V diagnosis shall be used as the basis for a denial only if those diagnoses are critical  
11 to establish the need for Level I PRTF treatment;

12 d. A description of the initial treatment plan relating to the admitting symptoms;

13 e. Current symptoms requiring inpatient treatment;

14 f. Information to support the medical necessity and clinical appropriateness of the  
15 services or benefits of the admission to a Level I PRTF in accordance with 907 KAR  
16 3:130;

17 g. Medication history;

18 h. Prior hospitalization;

19 i. Prior alternative treatment;

20 j. Appropriate medical, social, and family histories; and

21 k. Proposed aftercare placement;

22 2. Remain in effect for the days certified by the review agency; and

23 3. Be completed within thirty (30) days.

(b) A pre-admission certification review for a Level II PRTF for a non-emergent admission shall:

1. Contain:

a. The recipient's valid Medicaid identification number;

b. For a recipient who is not enrolled with a managed care organization, a valid MAP-569, Certification of Need by Independent Team Psychiatric Preadmission Review of Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21) which satisfies the requirements of 42 C.F.R. 44.152 and 42 C.F.R. 441.153 for patients age twenty-one (21) and under;

c. A DSM-IV-R diagnosis on all five (5) axes, except that failure to record an axis IV or V diagnosis shall be used as the basis for a denial only if those diagnoses are critical to establish the need for Level II PRTF treatment;

d. A description of the initial treatment plan relating to the admitting symptoms;

e. Current symptoms requiring inpatient treatment;

f. Information to support the medical necessity and clinical appropriateness of the services or benefits of the admission to a Level II PRTF in accordance with 907 KAR 3:130;

g. Medication history;

h. Prior hospitalization;

i. Prior alternative treatment;

j. Appropriate medical, social, and family histories; and

k. Proposed aftercare placement;

2. Remain in effect for the days certified by the review agency; and

1        3. Be completed within thirty (30) days.

2        (3) Failure to admit a recipient within the recipient's certification period shall require a  
3 new pre-admission certification review request.

4        (4) A utilization review plan for an emergency admission to a Level II PRTF shall  
5 contain:

6        (a) For a recipient who is not enrolled with a managed care organization, a completed  
7 MAP-570, Medicaid Certification of Need for Inpatient Psychiatric Services for  
8 Individuals Under Age Twenty-One (21):

9        1. Completed by the facility's interdisciplinary team; and

10       2. Placed in the recipient's medical record;

11       (b) Documentation, provided by telephone or electronically to the review agency  
12 within two (2) days of the recipient's emergency admission, justifying:

13       1. The recipient's emergency admission;

14       2. That ambulatory care resources in the recipient's community and placement in a  
15 Level I PRTF do not meet the recipient's needs;

16       3. That proper treatment of the recipient's psychiatric condition requires services  
17 provided by a Level II PRTF under the direction of a physician; and

18       4. That the services can reasonably be expected to improve the recipient's condition  
19 or prevent further regression so that the services are no longer needed;

20       (c) The recipient's valid Medicaid identification number;

21       (d) For a recipient who is not enrolled with a managed care organization, a valid  
22 MAP-569, Certification of Need by Independent Team Psychiatric Preadmission Review  
23 of Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21)



1 which satisfies the requirements of 42 C.F.R. 441.152 and 42 C.F.R. 441.153 for  
2 recipients age twenty-one (21) and under;

3 (e) A DMS-IV-R diagnosis on all five (5) axes, except that failure to record an axis IV  
4 or V diagnosis shall be used as the basis for a denial only if those diagnoses are critical  
5 to establish the need for Level II PRTF treatment;

6 (f) 1. A description of the initial treatment plan relating to the admitting symptom; and  
7 2. As part of the initial treatment plan, a full description of the intensive treatment  
8 services to be provided to the recipient;

9 (g) Current symptoms requiring residential treatment;

10 (h) Medication history;

11 (i) Prior hospitalization;

12 (j) Prior alternative treatment;

13 (k) Appropriate medical, social, and family histories; and

14 (l) Proposed aftercare placement.

15 (5) For an individual who becomes Medicaid eligible after admission and who is not  
16 enrolled with a managed care organization, a Level I or II PRTF's interdisciplinary team  
17 shall complete a MAP-570, Medicaid Certification of Need for Inpatient Psychiatric  
18 Services for Individuals Under Age Twenty-One (21), and the form shall be placed in the  
19 recipient's medical record.

20 (6) For a recipient, a Level I or II PRTF shall maintain medical records that shall:

21 (a) Be:

22 1. Current;

23 2. Readily retrievable;

1        3. Organized;

2        4. Complete; and

3        5. Legible;

4        (b) Reflect sound medical recordkeeping practice in accordance with:

5            1. 902 KAR 20:320;

6            2. KRS 194A.060;

7            3. KRS 434.840 through 860;

8            4. KRS 422.317; and

9            5. 42 C.F.R. 431 Subpart F;

10        (c) Document the need for admission and appropriate utilization of services;

11        (d) Be maintained, including information regarding payments claimed, for a minimum  
12 of six (6) years or until an audit dispute or issue is resolved, whichever is longer; and

13        (e) Be made available for inspection or copying or provided to the following upon  
14 request:

15            1. A representative of the United States Department for Health and Human Services  
16 or its designee;

17            2. The United States Office of the Attorney General or its designee;

18            3. The Commonwealth of Kentucky, Office of the Attorney General or its designee;

19            4. The Commonwealth of Kentucky, Office of the Auditor of Public Accounts or its  
20 designee;

21            5. The Commonwealth of Kentucky, Cabinet for Health and Family Services, Office of  
22 the Inspector General or its designee;

23            6. The department; or

1       7. A managed care organization with whom the department has contracted if the  
2 recipient is enrolled with the managed care organization.

3       (7)(a) If a Level I or Level II psychiatric residential treatment facility receives any  
4 duplicate payment or overpayment from the department or managed care organization,  
5 regardless of reason, the Level I or Level II psychiatric residential treatment facility shall  
6 return the payment to the department or managed care organization that issued the  
7 duplicate payment or overpayment in accordance with 907 KAR 1:671.

8       (b) Failure to return a payment to the department or managed care organization in  
9 accordance with paragraph (a) of this section may be:

10       1. Interpreted to be fraud or abuse; and

11       2. Prosecuted in accordance with applicable federal or state law.

12       (8)(a) When the department or managed care organization makes payment for a  
13 covered service and the Level I or Level II psychiatric residential treatment facility  
14 accepts the payment:

15       1. The payment shall be considered payment in full;

16       2. A bill for the same service shall not be given to the recipient; and

17       3. Payment from the recipient for the same service shall not be accepted by the Level  
18 I or Level II psychiatric residential treatment facility.

19       (b)1. A Level I or Level II psychiatric residential treatment facility may bill a recipient  
20 for a service that is not covered by the Kentucky Medicaid Program if the:

21       a. Recipient requests the service; and

22       b. Level I or Level II psychiatric residential treatment facility makes the recipient  
23 aware in advance of providing the service that the:

1 (i) Recipient is liable for the payment; and

2 (ii) Department or managed care organization if the recipient is enrolled with a  
3 managed care organization is not covering the service.

4 2. If a recipient makes payment for a service in accordance with subparagraph 1 of  
5 this paragraph, the:

6 a. Level I or Level II psychiatric residential treatment facility shall not bill the  
7 department or managed care organization, if applicable, for the service; and

8 b. Department or managed care organization, if applicable, shall not:

9 (i) Be liable for any part of the payment associated with the service; and

10 (ii) Make any payment to the Level I or Level II psychiatric residential treatment  
11 facility regarding the service.

12 (9)(a) A Level I or Level II psychiatric residential treatment facility attests by the Level  
13 I or Level II psychiatric residential treatment facility's staff's or representative's signature  
14 that any claim associated with a service is valid and submitted in good faith.

15 (b) Any claim and substantiating record associated with a service shall be subject to  
16 audit by the:

17 1. Department or its designee;

18 2. Cabinet for Health and Family Services, Office of Inspector General, or its  
19 designee;

20 3. Kentucky Office of Attorney General or its designee;

21 4. Kentucky Office of the Auditor for Public Accounts or its designee;

22 5. United States General Accounting Office or its designee; or

23 6. For an enrollee, managed care organization in which the enrollee is enrolled.

1 (c)1. If a Level I or Level II psychiatric residential treatment facility receives a request  
2 from the:

3 a. Department to provide a claim, related information, related documentation, or  
4 record for auditing purposes, the Level I or Level II psychiatric residential treatment  
5 facility shall provide the requested information to the department within the timeframe  
6 requested by the department; or

7 b. Managed care organization in which an enrollee is enrolled to provide a claim,  
8 related information, related documentation, or record for auditing purposes, the Level I  
9 or Level II psychiatric residential treatment facility shall provide the requested  
10 information to the managed care organization within the timeframe requested by the  
11 managed care organization.

12 2.a. The timeframe requested by the department or managed care organization for a  
13 Level I or Level II psychiatric residential treatment facility to provide requested  
14 information shall be:

15 (i) A reasonable amount of time given the nature of the request and the  
16 circumstances surrounding the request; and

17 (ii) A minimum of one (1) business day.

18 b. A Level I or Level II psychiatric residential treatment facility may request a longer  
19 timeframe to provide information to the department or a managed care organization if  
20 the Level I or Level II psychiatric residential treatment facility justifies the need for a  
21 longer timeframe.

22 (d)1. All services provided shall be subject to review for recipient or provider abuse.

23 2. Willful abuse by a Level I or Level II psychiatric residential treatment facility shall

1 result in the suspension or termination of the Level I or Level II psychiatric residential  
2 treatment facility from Medicaid Program participation in accordance with 907 KAR  
3 1:671.

4 Section 3. Covered Admissions. (1) A covered admission for a Level I PRTF:

5 (a) Shall be prior authorized by a review agency; and

6 (b) 1. Shall be limited to those for a child age six (6) through twenty (20) years of age  
7 who meets Medicaid payment status criteria; or

8 2. May continue based on medical necessity, for a recipient who is receiving active  
9 treatment in a Level I PRTF on the recipient's twenty-first (21st) birthday if the recipient  
10 has not reached his or her twenty-second (22nd) birthday.

11 (2) A covered admission for a Level II PRFT shall be:

12 (a) Prior authorized;

13 (b) Limited to those for a child:

14 1.a. Age four (4) through twenty-one (21) years who meets Medicaid payment status  
15 criteria; and

16 b. Whose coverage may continue, based on medical necessity, if the recipient is  
17 receiving active treatment in a Level II PRTF on the recipient's twenty-first (21st)  
18 birthday and the recipient has not reached his or her twenty-second (22nd) birthday;

19 2. With a severe emotional disability in addition to severe and persistent aggressive  
20 behaviors, an intellectual disability, sexually acting out behaviors, or a developmental  
21 disability; and

22 3.a. Who does not meet the medical necessity criteria for an acute care hospital,  
23 private psychiatric hospital, or state mental hospital; and

1       b. Whose treatment needs cannot be met in an ambulatory care setting, Level I  
2       PRTF, or in any other less restrictive environment; and

3       (c) Reimbursed pursuant to 907 KAR 9:005.

4       Section 4. PRTF Covered Services. (1)(a) There shall be a treatment plan developed  
5       for each recipient.

6       (b) A treatment plan shall specify:

7       1. The amount and frequency of services needed; and

8       2. The number of therapeutic pass days for a recipient, if the treatment plan includes  
9       any therapeutic pass days.

10      (2) To be covered by the department:

11      (a) The following services shall be available to a recipient covered under Section 3 of  
12      this administrative regulation and shall meet the requirements established in paragraph

13      (b) of this subsection:

14      1. Diagnostic and assessment services;

15      2. Treatment plan development, review, or revision;

16      3. Psychiatric services;

17      4. Nursing services which shall be provided in compliance with 902 KAR 20:320;

18      5. Medication which shall be provided in compliance with 907 KAR 1:019;

19      6. Evidence-based treatment interventions;

20      7. Individual therapy which shall comply with 902 KAR 20:320;

21      8. Family therapy or attempted contact with family which shall comply with 902 KAR  
22      20:320;

23      9. Group therapy which shall comply with 902 KAR 20:320;

1        10. Individual and group interventions that shall focus on additional and harmful use  
2 or abuse issues and relapse prevention if indicated;

3        11. Substance abuse education;

4        12. Activities that:

5        a. Support the development of an age-appropriate daily living skill including positive  
6 behavior management or support; or

7        b. Support and encourage the parent's ability to re-integrate the child into the home;

8        13. Crisis intervention which shall comply with:

9        a. 42 C.F.R. 483.350 through 376; and

10       b. 902 KAR 20:320;

11       14. Consultation with other professionals including case managers, primary care  
12 professionals, community support workers, school staff, or others;

13       15. Educational activities; or

14       16. Non-medical transportation services as needed to accomplish objectives;

15       (b) A Level I PRTF service listed in paragraph (a) of this subsection shall be:

16       1. Provided under the direction of a physician;

17       2. If included in the recipient's treatment plan, described in the recipient's current  
18 treatment plan;

19       3. Medically necessary; and

20       4. Clinically appropriate pursuant to the criteria established in 907 KAR 3:130;

21       (c) A Level I PRTF service listed in subparagraph (a)7, 8, 9, 11, or 13 shall be  
22 provided by a qualified mental health professional, behavioral health professional, or  
23 behavioral health professional under clinical supervision; or



1 (d) A Level II PRTF service listed in paragraph (a) of this subsection shall be:

2 1. Provided under the direction of a physician;

3 2. If included in the recipient's treatment plan, described in the recipient's current  
4 treatment plan;

5 3. Provided at least once a week:

6 a. Unless the service is necessary twice a week, in which case the service shall be  
7 provided at least twice a week; or

8 b. Except for diagnostic and assessment services which shall have no weekly  
9 minimum requirement;

10 4. Medically necessary; and

11 5. Clinically appropriate pursuant to the criteria established in 907 KAR 3:130.

12 (3) A Level II PRTF service listed in subparagraph (a)7, 8, 9, 11, or 13 shall be  
13 provided by a qualified mental health professional, behavioral health professional, or  
14 behavioral health professional under clinical supervision.

15 Section 5. Determining Patient Status. (1) The department shall review and evaluate  
16 the health status and care needs of a recipient in need of Level I or II PRTF care using  
17 the criteria identified in 907 KAR 3:130 to determine if a service or benefit is clinically  
18 appropriate.

19 (2) The care needs of a recipient shall meet the patient status criteria for:

20 (a) Level I PRTF care if the recipient requires:

21 1. Long term inpatient psychiatric care or crisis stabilization more suitably provided in  
22 a PRTF than in a psychiatric hospital; and

1        2. Level I PRTF services on a continuous basis as a result of a severe mental or  
2        psychiatric illness, including a severe emotional disturbance; or

3        (b) Level II PRTF care if the recipient:

4        1. Is a child with a severe emotional disability;

5        2. Requires long term inpatient psychiatric care or crisis stabilization more suitably  
6        provided in a PRTF than a psychiatric hospital;

7        3. Requires Level II PRTF services on a continuous basis as a result of a severe  
8        emotional disability in addition to a severe and persistent aggressive behavior, an  
9        intellectual disability, a sexually acting out behavior, or a developmental disability; and

10       4. Does not meet the medical necessity criteria for an acute care hospital or a  
11       psychiatric hospital and has treatment needs which cannot be met in an ambulatory  
12       care setting, Level I PRTF, or other less restrictive environment.

13       Section 6. Durational Limit, Re-evaluation, and Continued Stay. (1) A recipient's stay,  
14       including the duration of the stay, in a Level I or II PRTF shall be subject to the  
15       department's approval.

16       (2)(a) A recipient in a Level I PRTF shall be re-evaluated at least once every thirty  
17       (30) days to determine if the recipient continues to meet Level I PRTF patient status  
18       criteria established in Section 5(2) of this administrative regulation.

19       (b) A Level I PRTF shall complete a review of each recipient's treatment plan at least  
20       once every thirty (30) days.

21       (c) The review referenced in paragraph (b) of this subsection shall include:

22       1. Dated signatures of:

23       a. Appropriate staff; and

1       b. If present for the treatment plan meeting, a parent, guardian, legal custodian, or  
2 conservator;

3       2. An assessment of progress toward each treatment plan goal and objective with  
4 revisions indicated; and

5       3. A statement of justification for the level of services needed including:

6       a. Suitability for treatment in a less-restrictive environment; and

7       b. Continued services.

8       (d) If a recipient no longer meets Level I PRTF patient status criteria, the department  
9 shall only reimburse through the last day of the individual's current approved stay.

10       (e) The re-evaluation referenced in paragraph (a) of this subsection shall be  
11 performed by a review agency.

12       (3) A Level II PRTF shall complete by no later than the third (3rd) business day  
13 following an admission, an initial review of services and treatment provided to a  
14 recipient which shall include:

15       (a) Dated signatures of appropriate staff, parent, guardian, legal custodian, or  
16 conservator;

17       (b) An assessment of progress toward each treatment plan goal and objective with  
18 revisions indicated; and

19       (c) A statement of justification for the level of services needed including:

20       1. Suitability for treatment in a less-restrictive environment; and

21       2. Continued services.

1 (4)(a) For a recipient aged four (4) to five (5) years, a Level II PRTF shall complete a  
2 review of the recipient's treatment plan of care at least once every fourteen (14) days  
3 after the initial review referenced in subsection (3) of this section.

4 (b) The review referenced in paragraph (a) of this subsection shall include:

5 1. Dated signatures of appropriate staff, parent, guardian, legal custodian, or  
6 conservator;

7 2. An assessment of progress toward each treatment plan goal and objective with  
8 revisions indicated; and

9 3. A statement of justification for the level of services needed including:

10 a. Suitability for treatment in a less-restrictive environment; and

11 b. Continued services.

12 (5)(a) For a recipient aged six (6) to twenty-two (22) years, a Level II PRTF shall  
13 complete a review of the recipient's treatment plan of care at least once every thirty (30)  
14 days after the initial review referenced in subsection (3) of this section.

15 (b) The review referenced in paragraph (a) of this subsection shall include:

16 1. Dated signatures of appropriate staff, parent, guardian, legal custodian, or  
17 conservator;

18 2. An assessment of progress toward each treatment plan goal and objective with  
19 revisions indicated; and

20 3. A statement of justification for the level of services needed including:

21 a. Suitability for treatment in a less-restrictive environment; and

22 b. Continued services.

Section 7. Exclusions and Limitations in Coverage. (1) The following shall not be covered as Level I or II PRTF services under this administrative regulation:

~~(a)[1. Chemical dependency treatment services if the need for the services is the primary diagnosis of the recipient, except chemical dependency treatment services shall be covered as incidental treatment if minimal chemical dependency treatment is necessary for successful treatment of the primary diagnosis;~~

~~(b)~~ Outpatient services;

~~(b)[(e)]~~ Pharmacy services, which shall be covered in accordance with 907 KAR 1:019;

~~(c)[(d)]~~ Durable medical equipment, which shall be covered in accordance with 907 KAR 1:479;

~~(d)[(e)]~~ Hospital emergency room services, which shall be covered in accordance with 907 KAR 10:014;

~~(e)[(f)]~~ Acute care hospital inpatient services, which shall be covered in accordance with 907 KAR 10:012;

~~(f)[(g)]~~ Laboratory and radiology services, which shall be covered in accordance with 907 KAR 10:014 or 907 KAR 1:028;

~~(g)[(h)]~~ Dental services, which shall be covered in accordance with 907 KAR 1:026;

~~(h)[(i)]~~ Hearing and vision services, which shall be covered in accordance with 907 KAR 1:038; or

~~(i)[(j)]~~ Ambulance services, which shall be covered in accordance with 907 KAR 1:060.

1 (2) A Level I or II PRTF shall not charge a recipient or responsible party representing  
2 a recipient any difference between private and semiprivate room charges.

3 (3) The department shall not reimburse for Level I or II PRTF services for a recipient  
4 if appropriate alternative services are available for the recipient in the community.

5 (4) The following shall not qualify as reimbursable in a PRTF setting:

6 (a) An admission that is not medically necessary;

7 (b) Services for an individual:

8 1. With a major medical problem or minor symptoms;

9 2. Who might only require a psychiatric consultation rather than an admission to a  
10 PRTF; or

11 3. Who might need only adequate living accommodations, economic aid, or social  
12 support services.

13 Section 8. Reserved Bed and Therapeutic Pass Days. (1)(a) The department shall  
14 cover a bed reserve day for an acute hospital admission, a state mental hospital  
15 admission, a private psychiatric hospital admission, or an admission to a psychiatric bed  
16 in an acute care hospital for a recipient's absence from a Level I or II PRTF if the  
17 recipient:

18 1. Is in Medicaid payment status in a Level I or II PRTF;

19 2. Has been in the Level I or II PRTF overnight for at least one (1) night;

20 3. Is reasonably expected to return requiring Level I or II PRTF care; and

21 4.a. Has not exceeded the bed reserve day limit established in paragraph (b) of this  
22 subsection; or

1       b. Received an exception to the limit in accordance with paragraph (c) of this  
2 subsection.

3       (b) The annual bed reserve day limit per recipient shall be five (5) days per calendar  
4 year in aggregate for any combination of bed reserve days associated with an acute  
5 care hospital admission, a state mental hospital admission, a private psychiatric hospital  
6 admission, or an admission to a psychiatric bed in an acute care hospital.

7       (c) The department shall allow a recipient to exceed the limit established in  
8 paragraph (b) of this subsection, if the department determines that an additional bed  
9 reserve day is in the best interest of the recipient.

10       (2)(a) The department shall cover a therapeutic pass day for a recipient's absence  
11 from a Level I or II PRTF if the recipient:

- 12       1. Is in Medicaid payment status in a Level I or II PRTF;
- 13       2. Has been in the Level I or II PRTF overnight for at least one (1) night;
- 14       3. Is reasonably expected to return requiring Level I or II PRTF care; and
- 15       4.a. Has not exceeded the therapeutic pass day limit established in paragraph (b) of  
16 this subsection; or

17       b. Received an exception to the limit in accordance with paragraph (c) of this  
18 subsection.

19       (b) The annual therapeutic pass day limit per recipient shall be fourteen (14) days per  
20 calendar year.

21       (c) The department shall allow a recipient to exceed the limit established in  
22 paragraph (b) of this subsection, if the department determines that an additional  
23 therapeutic pass day is in the best interest of the recipient.

1 (3)(a) The bed reserve day and therapeutic pass day count for each recipient shall be  
2 zero (0) upon the effective date of this administrative regulation.

3 (b) For subsequent calendar years, the bed reserve day and therapeutic pass day  
4 count for each recipient shall begin at zero (0) on January 1 of the calendar year.

5 (4) An authorization decision regarding a bed reserve day or therapeutic pass day in  
6 excess of the limits established in this section shall be performed by a review agency.

7 (5)(a) An acute care hospital bed reserve day shall be a day when a recipient is  
8 temporarily absent from a Level I or II PRTF due to an admission to an acute care  
9 hospital.

10 (b) A state mental hospital bed reserve day, private psychiatric hospital bed reserve  
11 day, or psychiatric bed in an acute care hospital bed reserve day, respectively, shall be  
12 a day when a recipient is temporarily absent from a Level I or II PRTF due to receiving  
13 psychiatric treatment in a state mental hospital, private psychiatric hospital, or  
14 psychiatric bed in an acute care hospital respectively.

15 (c) A therapeutic pass day shall be a day when a recipient is temporarily absent from  
16 a Level I or II PRTF for a therapeutic purpose that is:

- 17 1. Stated in the recipient's treatment plan; and
- 18 2. Approved by the recipient's treatment team.

19 (6)(a) A Level I or II PRTF's occupancy percent shall be based on a midnight census.

20 (b) An absence from a Level I or II PRTF that is due to a bed reserve day for an  
21 acute hospital admission, a state mental hospital admission, a private psychiatric  
22 hospital admission, or an admission to a psychiatric bed in an acute care hospital shall  
23 count as an absence for census purposes.



1 (c) An absence from a Level I or II PRTF that is due to a therapeutic pass day shall  
2 not count as an absence for census purposes.

3 Section 9. Outpatient Services Requirements Established in 907 KAR 9:015. The  
4 department's coverage provisions and requirements regarding outpatient behavioral  
5 health services provided by a Level I or II PRTF shall be as established in 907 KAR  
6 9:015.

7 Section 10. Third Party Liability. A Level I or Level II PRTF shall comply with KRS  
8 205.622.

9 Section 11. Use of Electronic Signatures. (1) The creation, transmission, storage, and  
10 other use of electronic signatures and documents shall comply with the requirements  
11 established in KRS 369.101 to 369.120.

12 (2) A Level I PRTF or Level II PRTF that chooses to use electronic signatures shall:

13 (a) Develop and implement a written security policy that shall:

14 1. Be adhered to by each of the Level I PRTF's or Level II PRTF's employees,  
15 officers, agents, or contractors;

16 2. Identify each electronic signature for which an individual has access; and

17 3. Ensure that each electronic signature is created, transmitted, and stored in a  
18 secure fashion;

19 (b) Develop a consent form that shall:

20 1. Be completed and executed by each individual using an electronic signature;

21 2. Attest to the signature's authenticity; and

22 3. Include a statement indicating that the individual has been notified of his or her  
23 responsibility in allowing the use of the electronic signature; and

1 (c) Provide the department, immediately upon request, with:

2 1. A copy of the Level I PRTF's or Level II PRTF's electronic signature policy;

3 2. The signed consent form; and

4 3. The original filed signature.

5 Section 12. Auditing Authority. The department or the managed care organization in  
6 which an enrollee is enrolled shall have the authority to audit any:

7 (1) Claim;

8 (2) Medical record; or

9 (3) Documentation associated with any claim or medical record.

10 Section 13. Federal Financial Participation. (1) The department's coverage of  
11 services pursuant to this administrative regulation shall be contingent upon~~[A policy~~  
12 ~~established in this administrative regulation shall be null and void if the Centers for~~  
13 ~~Medicare and Medicaid Services];~~

14 (a) Receipt of~~[(1) Denies or does not provide]~~ federal financial participation for the  
15 coverage~~[policy]; and~~~~[or]~~

16 (b) Centers for Medicare and Medicaid Services' approval of the coverage~~[(2)~~  
17 ~~Disapproves the policy].~~

18 (2) The coverage of services provided by a licensed clinical alcohol and drug  
19 counselor or licensed clinical alcohol and drug counselor associate shall be contingent  
20 and effective upon approval by the Centers for Medicare and Medicaid Services.

21 Section 14.~~[10.]~~ Appeal Rights. (1)(a) An appeal of an adverse~~[a negative]~~ action by  
22 the department regarding a service and a recipient who is not enrolled with a managed  
23 care organization~~[Medicaid beneficiary]~~ shall be in accordance with 907 KAR 1:563.

1     (b) An appeal of an adverse action by a managed care organization regarding a  
2     service and an enrollee shall be in accordance with 907 KAR 17:010.

3     (2) An appeal of a negative action regarding Medicaid eligibility of an individual shall  
4     be in accordance with 907 KAR 1:560.

5     (3) An appeal of a negative action regarding a Medicaid provider shall be in  
6     accordance with 907 KAR 1:671.

7     Section 15.~~[14.]~~ Incorporation by Reference. (1) The following material is  
8     incorporated by reference:

9     (a) "MAP-569, Certification of Need by Independent Team Psychiatric Preadmission  
10    Review of Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-  
11    One (21)", revised 5/90; and


12    (b) "MAP-570, Medicaid Certification of Need for Inpatient Psychiatric Services for  
13    Individuals Under Age Twenty-one (21)", revised 5/90.

14    (2) This material may be inspected, copied, or obtained, subject to applicable  
15    copyright law, at the Department for Medicaid Services, Cabinet for Health and Family  
16    Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8  
17    a.m. to 4:30 p.m. (18 Ky.R. 600; eff. 10-6-91; Am. 19 Ky.R. 2340; eff. 6-16-93; 22 Ky.R.  
18    1906; eff. 6-6-96; 27 Ky.R. 2910; 3267; eff. 6-8-2001; T. Am.; eff. 5-3-11; Recodified from  
19    907 KAR 1:505; eff. 3-20-2012; TAm eff. 3-20-12; 39 Ky.R. 629; 1218; 1413; eff. 3-8-  
20    2013.)

907 KAR 9:005

REVIEWED:

3-18-15  
Date

  
Lisa Lee, Commissioner  
Department for Medicaid Services

APPROVED:

4/9/15  
Date

Audrey Tayse Haynes  
Audrey Tayse Haynes, Secretary  
Cabinet for Health and Family Services

907 KAR 9:005

## **PUBLIC HEARING AND PUBLIC COMMENT PERIOD**

A public hearing on this administrative regulation shall, if requested, be held on May 22, 2015 at 9:00 a.m. in the Health Services Auditorium, Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2015 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business June 1, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

**CONTACT PERSON:** Tricia Orme, [tricia.orme@ky.gov](mailto:tricia.orme@ky.gov), Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, Phone: (502) 564-7905, Fax: (502) 564-7573.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 907 KAR 9:005

Contact person: Stuart Owen (502) 564-4321

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) coverage provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's coverage provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's coverage provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing DMS's coverage provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment clarifies that this administrative regulation applies to non-outpatient services provided by a Level I or II PRTF; inserts new definitions necessary for clarity; inserts electronic signature provisions; and inserts a provision authorizing DMS or managed care organizations to audit claims and records.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as DMS is expanding its coverage and reimbursement scope for outpatient behavioral health services to include such services provided in a Level I or II PRTF. DMS is doing so via new administrative regulations - 907 KAR 9:015 (Coverage provisions and requirements regarding outpatient behavioral health services provided by a Level I or II psychiatric residential treatment facility) and 907 KAR 9:0200 (Reimbursement provisions and requirements regarding outpatient behavioral health services provided by a Level I or II psychiatric residential treatment facility). Consequently, it is necessary to amend this administrative regulation to clarify that its requirements and provisions do not apply to outpatient behavioral health services provided by a Level I or II PRTF.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying that the requirements and provisions in this administrative regulation do not apply to outpatient behavioral health services provided by a Level I or II PRTF.

(d) How the amendment will assist in the effective administration of the statutes: The

amendment will assist in the effective administration of the authorizing statutes by clarifying that the requirements and provisions in this administrative regulation do not apply to outpatient behavioral health services provided by a Level I or II PRTF.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Level I and II PRTFs will be affected by the amendment. Currently, there are twenty-three (23) Level I PRTFs enrolled in the Medicaid Program and zero (0) Level II PRTFs enrolled in the Medicaid Program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit due to clarify regarding which administrative regulation is applicable to non-outpatient behavioral health services provided in a Level I or II PRTF.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No cost will be incurred as a result of the amendment.

(b) On a continuing basis: No cost will be incurred as a result of the amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

## FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation: 907 KAR 9:005

Contact person: Stuart Owen (502) 564-4321

1. Federal statute or regulation constituting the federal mandate. 42 USC 1396a(a)(10), 42 USC 1396d(a)(16), 42 USC 1396d(h), 42 CFR 441.151 and 42 CFR 440.160.
2. State compliance standards. To qualify as a Level I or II PRTF, a facility must meet the criteria established in KRS 216B.450 through 457.
3. Minimum or uniform standards contained in the federal mandate. Per federal Medicaid law, inpatient psychiatric facility services for individuals under twenty-one (21) is not a mandatory Medicaid benefit, but if a state's state plan includes intermediate care facility services for individuals with mental retardation, it must also cover inpatient psychiatric facility services for individuals under twenty-one (21.) Additionally, states may be required to provide inpatient psychiatric care under the early and periodic screening, diagnosis and treatment program (EPSDT).

Pursuant to 42 CFR 440.160, "Inpatient psychiatric services for individuals under age 21" means services that—

- (a) Are provided under the direction of a physician;
- (b) Are provided by—
  - (1) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations, or
  - (2) A psychiatric facility which is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Council on Accreditation of Services for Families and Children, the Commission on Accreditation of Rehabilitation Facilities, or by any other accrediting organization, with comparable standards, that is recognized by the State.
- (c) Meet the requirements in §441.151 of this subchapter."

Additionally, 42 CFR 441.151 states, "(a) Inpatient psychiatric services for individuals under age 21 must be:

- (1) Provided under the direction of a physician;
- (2) Provided by—
  - (i) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations; or
  - (ii) A psychiatric facility that is not a hospital and is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization with comparable standards that is recognized by the State.
- (3) Provided before the individual reaches age 21, or, if the individual was receiving the services immediately before he or she reached age 21, before the earlier of the following—
  - (i) The date the individual no longer requires the services; or



(ii) The date the individual reaches 22; and

(4) Certified in writing to be necessary in the setting in which the services will be provided (or are being provided in emergency circumstances) in accordance with §441.152.

(b) Inpatient psychiatric services furnished in a psychiatric residential treatment facility as defined in §483.352 of this chapter, must satisfy all requirements in subpart G of part 483 of this chapter governing the use of restraint and seclusion."

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation: 907 KAR 9:005

Contact person: Stuart Owen (502) 564-4321

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? No cost will be incurred as a result of the amendment.

(d) How much will it cost to administer this program for subsequent years? No cost will be incurred as a result of the amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: